

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No. 18818 of 1996

Date: 18.01.2007

Between:

C. Venkatesham.

-

_____ ... Petitioner

and

The A.P. State Road Transport Corporation, rep., by its Managing
Director, Mushirabad, Hyderabad and another.

-

_____ ... Respondents.

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No. 18818 of 1996

ORDER:

Aggrieved by the order of removal dated 23.08.1996 the present writ petition is filed by a driver of the respondent corporation.

The petitioner joined the services of the respondent corporation in the year 1984 as a driver and continued to serve the corporation till he was removed from service by order dated 23.08.1996. According to the petitioner, he applied leave for ten days from 11.05.1996 to 20.05.1996 as his wife was suffering from mental depression and he had to take her to Hyderabad for treatment. It is his case that he was not communicated about the refusal of the leave and that he had proceeded to Hyderabad to provide treatment for his wife. He reported for duty on 21.05.1996 and was permitted to discharge his duties from 22.05.1996. A charge memo was issued on 22.05.1996 and an enquiry was ordered. The petitioner appeared before the enquiry officer on 12.08.1996 and his statement was recorded. He explained the circumstances which remained unchallenged and unrebutted. It is his case that no witness was examined by the 2nd respondent but the enquiry officer submitted a report holding the petitioner guilty of the charges. The petitioner would contend that the findings of the enquiry officer are perverse and are based on no evidence and that, in any event, the punishment of removal from service for absence of ten days is shockingly disproportionate to the misconduct held established, more so when he had put in twelve

years of unblemished service. While it is the case of the petitioner that he had applied for leave before he went to Hyderabad, it is the case of the respondent that no such leave was sanctioned and that the petitioner had not approached the Depot Manager, Narayankhed for sanction of leave nor did he submit any medical certificate of his wife's treatment even after he reported for duty.

While the submission of Sri A.K. Jayaprakash Rao, learned Counsel for the petitioner that, in as much as the petitioner had submitted leave application prior to his proceeding on leave, his absence cannot be said to be unauthorized, has considerable force, this contention does not necessitate any further examination since I am satisfied that the writ petition is required to be allowed on the short ground that the punishment imposed on the petitioner is shockingly disproportionate to the charge held established. The fact that the petitioner had put in twelve years of unblemished service prior to this charge sheet is not in dispute. It is also not in dispute that the petitioner had submitted a leave application prior to his proceeding on leave. It is the petitioner's case that he had to go to Hyderabad to provide treatment for his wife who was suffering from mental disorder. In such circumstances, while his proceeding on leave prior to leave being actually sanctioned may amount to misconduct, it certainly does not justify imposition of the punishment of removal from service.

Sri A.K. Jayaprakash Rao, learned Counsel for the petitioner, would point out that aggrieved by the said order, when the petitioner approached this Court, this Court had passed interim directions to continue him in service and consequent thereto the

petitioner was reinstated into duty and that he has been working ever since for the past more than a decade. Learned Counsel would seek indulgence of this Court to give a quietus to this matter and submit that the punishment of warning or censure would suffice.

While this submission is no doubt persuasive, it would be inappropriate for this Court to take upon itself the task of examining the nature and quantum of punishment, since these are all matters for the competent authority to examine. Suffice it to hold that, for proceeding on leave for ten days after submitting a leave application without awaiting sanction, the punishment imposed of removal from service, on a driver who has put in twelve years of unblemished service prior thereto, is shockingly disproportionate and unduly harsh. The impugned order of removal from service is set aside and the matter is remanded back to the disciplinary authority, to take into consideration the facts and circumstances of the case in its entirety, including the fact of the petitioner's wife's illness, his submitting a leave application prior to his absence of ten days and the fact that pursuant to the interim directions of this Court he has been working in the respondent corporation for more than a decade, and take an appropriate decision on the nature and extent of punishment, if any, to be imposed. Needless to state that, pending any orders which the competent authority may pass in this regard, the petitioner shall be continued in service in accordance with the interim directions of this Court.

The writ petition is disposed of accordingly. No order as to

costs.

Date: 18.01.2007

 RAMESH RANGANATHAN, J

MRKR